

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

JOE J. MACHADO et al.,

Petitioners,

v.

THE SUPERIOR COURT OF SAN JOAQUIN
COUNTY,

Respondent,

MICHAEL ATHERTON et al.,

Real Parties in Interest.

C052442

Super.Ct.No. CV027597

MODIFICATION OF
OPINION;
No Change in Judgment

ORIGINAL PROCEEDING. Petition for Writ of Mandate. Writ
denied.

Freidberg & Parker, Edward Freidberg, Alan W. Foutz and
Susanna V. Pullen for Petitioners.

No appearance for Respondent.

Morgan, Miller & Blair and Joshua D. Cohen for Real Parties
in Interest.

THE COURT:

The typewritten opinion filed herein on March 20, 2007, is
modified as follows:

On page 2, delete in its entirety the sentence on line one commencing with "We find Atherton" and ending with the merits." and replace it with the following language:

We conclude that although ordinarily a nonparty must file a separate action to prevent former counsel from continuing with an adverse representation, in this case Atherton has standing to make the motion because he is alleged to be the alter ego and coconspirator of a party, and because this case was filed in order to evade a prior disqualification order in a related case in which Atherton is a named party. We also conclude, contrary to some published authority, that because a disqualification order may be appealed immediately, it may not be reviewed on appeal from a final judgment. For this reason, the prior disqualification order in the related case is a final order for purposes of issue preclusion. Because the disqualification motions in the two cases raised the same issues, review of the merits of the latter order is precluded.

This modification does not change the judgment.

FOR THE COURT:

DAVIS, Acting P.J.

NICHOLSON, J.

MORRISON, J.